



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Bernardina N,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 2019005688

Agency No. 4G-752-0135-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated July 2, 2019, dismissing her complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

On March 1, 2019, Complainant, a former City Carrier at the Agency's facility in Garland, Texas, initiated EEO Counselor contact. On June 13, 2019, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination based on disability.

On July 2, 2019, the Agency issued the instant final decision. The Agency determined that the formal complaint was comprised of the following claim:

On January 15, 2019, [Complainant was] told that [she was] terminated.

The Agency dismissed the formal complaint for untimely EEO Counselor contact. The Agency reasoned that Complainant initiated EEO Counselor contact on March 1, 2019, outside of the applicable time period and should have reasonably suspected discrimination long before her EEO

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

contact date. The Agency reasoned that “[Complainant’s] most recent PS Form 50 reflects Complainant’s last day in pay status was November 30, 2009...Other records contained in the record reflect that [she was] injured on the job on February 27, 2009 and filed a traumatic injury report with the Department of Labor. [Complainant’s] claim for wage loss compensation benefits was terminated on August 23, 2015 on the basis that the medical evidence established that [she was] no longer disabled from work as a result of the February 2009 injury.” The Agency also noted that Complainant contacted a member of Congress regarding her employment prior to May 2018, but did not initiate EEO contact until March 1, 2019.

The Agency further found that the doctrine of laches applies to this matter. The Agency reasoned that the record reflects that Complainant waited 5-10 years prior to initiating EEO contact.

The instant appeal followed. On appeal, Complainant submits documents that are already part of the record. However, Complainant does not submit a statement or brief in support of her appeal.

ANALYSIS AND FINDINGS

The Agency properly dismissed the formal complaint for untimely EEO Counselor contact. EEOC Regulation 29 C.F.R. § 1614.105(a)(1) requires that complaints of discrimination should be brought to the attention of the Equal Employment Opportunity Counselor within forty-five (45) days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) days of the effective date of the action. The Commission has adopted a "reasonable suspicion" standard (as opposed to a "supportive facts" standard) to determine when the forty-five (45) day limitation period is triggered. See Howard v. Dep’t of the Navy, EEOC Request No. 05970852 (Feb. 11, 1999). Thus, the time limitation is not triggered until a complainant reasonably suspects discrimination, but before all the facts that support a charge of discrimination have become apparent.

EEOC regulations provide that the agency or the Commission shall extend the time limits when the individual shows that she was not notified of the time limits and was not otherwise aware of them, that she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence she was prevented by circumstances beyond her control from contacting the Counselor within the time limits, or for other reasons considered sufficient by the agency or the Commission.

We concur with the Agency that Complainant’s claim is barred by the doctrine of laches because she initiated EEO contact years after the alleged discriminatory act. The Commission has consistently held that a complainant must act with due diligence in the pursuit of her claim or the doctrine of laches may apply. See Becker v. U.S. Postal Serv., EEOC Appeal No. 01A45028 (Nov. 18, 2004) (finding that the doctrine of laches applied when complainant waited over two years from the date of the alleged discriminatory events before contacting an EEO Counselor); O’Dell v. Dep’t of Health and Human Serv., EEOC Request No. 05901130 (Dec. 27, 1990).

The doctrine of laches is an equitable remedy under which an individual's failure to pursue diligently her course of action could bar her claim.

Complainant asserts that she realized she was terminated from Agency employment in January 2019, when speaking with an Agency Health and Resource Management Specialist. However, we are not persuaded by this assertion. The record contains a copy of a Notification of Personnel Action Form reflecting that Complainant's termination from Agency employment and last day in pay status was November 30, 2009, over *nine years* before Complainant initiated EEO contact. The record also contains correspondence pertaining to her OWCP claim indicating that her wage compensation benefits ended on August 23, 2015, almost four years prior to her EEO contact. Based on the foregoing, we find that the doctrine of laches applies.

We AFFIRM the Agency's final decision dismissing the formal complaint for the reason discussed above.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

November 5, 2019

Date